NEW YORK STOCK EXCHANGE
NEW YORK

FEBRUARY 14, 1934.

To the Presidents of All Listed Corporations:

I enclose herewith a copy of the bill introduced into the Congress on February 9, 1934, which proposes the enactment of the "National Securities Exchange Act of 1934".

This bill while purporting to regulate stock exchanges, in fact contains so many provisions which would seriously affect listed corporations and their officers, directors and principal stockholders that I have taken the liberty of sending you a copy and invite your attention to the following sections of the bill.

Sec. 11 (page 14) requires corporations which are listed upon an exchange to file with the Federal Trade Commission a registration statement. Inasmuch as the bill becomes effective on October 1st and this section provides that the registration statement must be filed with the Federal Trade Commission thirty days before it becomes effective, the last day on which listed corporations could comply with this provision would be September 1, 1934.

The registration statement must include an undertaking by the corporation to abide by all future rules and regulations made by the Federal Trade Commission and an agreement not to lend any funds in the money market or to any person who transacts a business in securities except in accordance with the regulations of the Federal Trade Commission.

Furthermore, elaborate financial and other statements, not only for current years but also for preceding years, must be filed, many of which must be certified by independent public accountants. Finally, the Federal Trade Commission is authorized to demand such other information as the Commission may require as necessary and appropriate in the public interest or for the protection of investors.

This same section apparently would allow a corporation which was once registered with the Federal Trade Commission to withdraw from registration only "upon such terms as the Commission may fix".

Sec. 12 (page 16) deals with annual and other reports and requires every listed corporation to file with the Exchange and the Commission in such form as the Commission may prescribe:

(1) Such information and documents as the Commission may require to keep reasonably current the information previously filed;

(2) Annual and quarterly reports, including both a balance sheet and profit and loss statement certified by independent public accountants;

(3) Monthly reports including among other things, a statement of gross sales or gross income; and

(4) Such other reports and at such times as the Federal Trade Commission may require.

The unlimited character of the reports which may be required under this section is not apparent unless subdivisions (a) and (b) of Sec. 18 (page 21) are read in connection with Secs. 12 and 13.

Sec. 18 (a) gives the Commission power to prescribe the form and contents of the statements and reports which must be filed by corporations and allows it to define the accounting, technical and trade terms used in the Act.

Subdivision (b) permits the Federal Trade Commission to prescribe the forms which must be used; the items and details to be shown in the balance sheet and earning statement, and also the methods to be followed in the preparation of accounts, in the appraisal and valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, and in the differentiation of investment and operating income. The Commission may also require consolidated statements of accounts with any person directly or indirectly controlling or controlled by the listed corporation or with any person under direct or indirect common control.

Sec. 13 (page 17) deals with proxies and prohibits any person (and this term by definition includes any corporation) soliciting any proxy or consent or authorization in respect of any listed security unless prior thereto a statement shall have been filed with the Commission. This statement must be included as a part of every such solicitation and must set forth the purposes of the proxy, the persons to exercise it, their relation to and interest in the listed security and also the names and addresses of the persons from whom similar proxies are being solicited. It shall contain such further information as the Commission may require. Literally construed, this would require every corporation sending proxies to its own stockholders to send each of them a copy of its list of stockholders.

Sec. 15 (page 18) requires every director, officer or owner of more than 5% of any class of a listed security to file with the Exchange and with the Federal Trade Commission at the time of listing or when he becomes a director, officer or such owner of securities and also within ten days after the close of each calendar month in which there has been any change in the amount of such securities owned by him, a statement indicating the extent of his ownership of such securities and of all changes therein which may have occurred during the calendar month.

It further prohibits any director, officer or such owner of securities:

(1) From purchasing such listed security with the intention or expectation of selling the same within six months and in the event that any transaction is made within six months any profit realized on it may be recovered by the corporation of which he is an officer, director or stockholder. The profit so recoverable is not the actual profit realized but the difference between the highest price or prices at which the security has

been sold and the lowest price or prices at which it has been purchased by said director, officer or stockholder within the six months' period.

(2) From selling such listed security which he does not own or selling the same even when owned if actual delivery is not made within five days.

(3) From disclosing any confidential information to any person and if any profit is made by any person who shall have received confidential information it can be recovered by the corporation. The method of calculating the profit so recoverable is similar to the method employed in determining the profits realized by officers, directors or principal stockholders buying and selling within six months.

Sec. 17 (page 20) provides that any person who shall make, or any person, including any director, officer, accountant or agent of a corporation, who shall be responsible for making any statement in any report or document filed with the Federal Trade Commission which statement "is, in the light of the circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor" liable to any person who, while ignorant of the falsity of such statement, shall purchase or sell any security the price of which may have been affected by such statement. The person sued will not be liable if he can sustain the burden of proof that he acted in good faith and in the exercise of reasonable care had no ground to believe that such statement was false or misleading. Otherwise, he will be liable in an amount equal to the difference between the price paid and the lowest price at which the security shall have sold or ninety days before and ninety days after any purchase or, in the case of a sale, the difference between the price realized and the highest price at which the security shall have sold for ninety days before and ninety days following the sale. Such amounts can apparently be recovered irrespective of the actual damages suffered by the person bringing suit, and he can sue each director, officer and stockholder if more than one was responsible for making the statement. The right of a person to sue does not depend upon whether he may have seen or relied upon the false statement and, therefore, all stockholders who bought or sold would presumably have a right of action against all officers, directors and principal stockholders who made or were responsible for making such statement.

Sec. 18 (page 21) which confers special powers on the Federal Trade Commission, has been referred to in connection with Secs. 11 and 12. These powers are so extensive that the Federal Trade Commission might dominate and actually control the management of each listed corporation.

Sec. 19 (page 24) makes every person who controls another, through stock ownership, agency or otherwise or through any agreement or understanding, liable for the acts of the controlled person to the same extent as if such acts were his own. In like manner, the acts of any spouse or of a child or parent residing with a person may be imputed to such person for the purpose of determining liability under the Act.

Sec. 20 (page 25) provides means by which the Federal Trade Commission may enforce its rules and regulations and while Sec. 23 purports to give any aggrieved person the right of reviewing decisions of the Commission by appeal to the courts, the value of this remedy is limited by the provision that the findings of the Commission as to the facts, if supported by evidence, shall be conclusive.

Secs. 21 and 22 (page 26) provide that all hearings by the Commission shall be public and that all reports or documents filed with the Commission shall be public records. In effect, therefore, all statistical data and all information in regard to trade practices or the affairs of listed corporations which the Federal Trade Commission has the right to require must be made available to the public, irrespective of whether such information may adversely affect the interests of a listed corporation by furnishing valuable information to competitors.

Sec. 24 (page 27) provides criminal penalties which may amount to a fine of $25,000 or imprisonment for ten years or both for any violation of any provision of the Act or for any violation of any rule or regulation that may at any time be adopted by the Federal Trade Commission.

The other provisions of the Act deal primarily with security markets and will affect listed corporations only indirectly by destroying the market for their securities.

I have taken the liberty of addressing you because the prevalent belief that the bill applies only to stock exchanges and dealers in securities has led many people to overlook the provisions which it contains directly affecting corporations and subjecting them to the control of the Federal Trade Commission.

Faithfully yours,

RICHARD WHITNEY,
President.